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ALEXANDER L. STEVENS,
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IN THE
Supreme Court of the United States
OCTOBER TERM, 1983

EVERETTE ONEIL TURBERVILLE,

Petitioner,
v.

STATE OF ALABAMA,

Respondent.

**PETITION FOR A WRIT OF CERTIORARI TO
THE ALABAMA SUPREME COURT**

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Question Presented

Where law enforcement officers have probable cause to believe that luggage contains contraband and where the luggage is subsequently placed in a vehicle, does the placing of the luggage in the vehicle authorize law enforcement officers to disregard the warrant requirement of the Fourth and Fourteenth Amendment of the United States Constitution and search the luggage without a search warrant, even though the vehicle was not searched and was not the suspected locus of contraband.

TABLE OF CONTENTS

	<u>PAGE</u>
Question Presented.....	i
Opinion Below.....	1
Jurisdiction.....	2
Constitutional Provisions and Statutory Provisions.....	3
Statement of the Case.....	4
Reasons for Granting the Writ--The facts in this case, which are identical to <u>Arkansas v. San- ders</u> , 42 U.S. 753, 61 L.Ed.2d 235, 99 S.Ct.2586, present an opportunity for this Court to more fully clarify the hold- ing in <u>United States v. Ross</u> , 456 U.S. 798, 72 L.Ed.2d 572, 102 S.Ct.2157, which held in part, "Although we have re- jected some of the reasoning in <u>Sanders</u> , we adhere to our holding in that case".....	11
Conclusion.....	15
Appendix.....	1a

TABLE OF CASES

<u>Arkansas v. Sanders</u> , 42 U.S. 753, 61 L.Ed.2d 235, 99 S.Ct. 2586.....	11,12,13,14,15
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TABLE OF CASES

	<u>PAGE</u>
<u>California v. Robbins</u> , 453 US 420, 69 L.Ed.2d 744, 101 S.Ct. 2841.....	14
<u>Carroll v. United States</u> , 267 US 132, 69 L.Ed.543, 45 S.Ct.280.....	14
<u>Chambers v. Maroney</u> , 399 U.S. 42, 95 S.Ct.1975, 26 L.Ed. 2d 419 (1970).....	14
<u>United States v. Chadwick</u> , (US) 97 S.Ct.2476, 53 L.Ed.2d 538.....	12,13,14
<u>United States v. Ross</u> , 456 US 798, 72 L.Ed.2d 572, 102 S.Ct.2157.....	11,13,14,15

STATUTES AND RULES CITED

United States Constitution, Fourth Amendment.....	2,3,4,5
United States Constitution, Four- teenth Amendment.....	2,3,4,5
28 U.S.C. §1257(3).....	2

IN THE
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EVERETTE ONEIL TURBERVILLE,

v.

Petitioner,

STATE OF ALABAMA,

Respondent.

**PETITION FOR A WRIT OF CERTIORARI TO
THE ALABAMA SUPREME COURT**

Petitioner, Everette Oneil Turberville, respectfully prays that a Writ of Certiorari issue to review the judgment of the Alabama Supreme Court and the Court of Criminal Appeals for the State of Alabama, whereby substantial constitutional issues presented by Petitioner were not answered by either of the said Courts, even though timely raised.

Opinion Below

The rulings of the Court of Criminal Appeals as to the original appeal filed on

February 22, 1983, (First Division, Number 537) set forth in Appendix 1a.

The denial of Petitioner's application for rehearing as well as the motion for Rule 39(k), which was filed on May 17, 1983, as set forth infra in Appendix 2a.

The granting of a petition for writ of certiorari to the Court of Criminal Appeals by the Alabama Supreme Court on August 12, 1983, as set forth infra in Appendix 3a.

The writ of certiorari quashed as improvidently granted by the Alabama Supreme Court on October 3, 1983, as set forth in Appendix 4a.

Jurisdiction

The petition invokes this Court's jurisdiction pursuant to 28 USC §1257(3) in that it sets up a claim of the petitioner's rights under the right to be secure in his person, houses, papers, and effects against unreasonable searches and seizures as guaranteed to him in the Fourth and Fourteenth Amendment to the Constitution of the United States; hence, Petitioner's application to this Honorable Court to review the order of the Alabama Supreme Court dated October 3,

1983, and entered by the Clerk of the Alabama Court of Criminal Appeals on October 3, 1983.

Constitutional And Statutory Provisions

This case involves the Fourth and Fourteenth Amendments to the Constitution of the United States.

The Fourth Amendment to the Constitution of the United States states as follows:

"The right of the people to be secure in their persons, houses, papers and effect against unreasonable searches and seizures, shall not be violated and no warrant shall issue but upon probable cause supported by oath or affirmation and particularly describing the place to be searched and the persons or things to be seized."

The Fourteenth Amendment to the Constitution of the United States, in pertinent parts, states as follows:

"No State shall...deprive any person of life, liberty or property, without due process of law; nor deny to any person within it's jurisdiction the equal protection of the laws."

Statement of the Case

The Petitioner, Everette Oneil Turberville, was arrested on October 15, 1981, by State and County law enforcement officers, and he was charged with trafficking illegal drugs.

On November 2, 1981, Defendant requested a preliminary hearing. And on November 4, 1981, Defendant filed a Motion to Suppress the Evidence in the District Court of Monroe County, Alabama, alleging that the evidence seized was seized as a result of an improper, illegal and otherwise unconstitutional search of Defendant's personal property. The Motion to Suppress further alleged that the Defendant's Fourth Amendment rights against unreasonable searches and seizures had been violated, and that the Defendant had been deprived of his rights under the Fourteenth Amendment of the United States Constitution and the Constitution and Laws of the State of Alabama. The Motion to Suppress also alleged that the search and seizure was made without a search warrant and in violation of the Fourth Amendment and the Fourteenth Amendment of the United States Constitution.

and the Constitution and Laws of the State of Alabama. The Motion to Suppress also alleged that the officers seized and searched Defendant's personal property, viz., a repository for personal effects without a search warrant and thereby violated the Fourth and Fourteenth Amendment of the United States Constitution and the Constitution and Laws of the State of Alabama. The Motion to Suppress the Evidence was subsequently denied by the District Court, and the Defendant, after a perliminary hearing, was bound over to the Grand Jury for further action.

During the Spring Session of 1982, the Grand Jury of Monroe County, Alabama, returned an indictment charging the Petitioner with possession of marijuana. On May 19, 1982, Petitioner filed another Motion to Suppress the Evidence, setting out and alleging the same grounds as heretofore shown to have been raised in the District Court and denied by said Court. This Motion to Suppress was filed in the Circuit Court of Monroe County, Alabama. Subsequent to the filing of this Motion to Suppress, the Petitioner waived his right to a jury trial and submitted the case to the Circuit Court to a non-jury trial based upon the trans-

cribed testimony which had been previously taken during the preliminary hearing of this matter.

At the hearing on the Motion to Suppress and the evidence that was submitted to both the District Court and the Circuit Court in its determination of the Motion to Suppress, the following evidence was submitted:

The State's evidence tends to show that Deputy Sheriff, Steve Griffis, received information from a reliable informant that Appellant was staying at the Monroe Motor Court Downtown in Monroeville, Alabama.

The informant further told Deputy Griffis that there was a large quantity of marijuana that was in a large, brown suitcase in the Downtown Motor Court.

Deputy Griffis testified that he established that the Appellant was at the Downtown Motor Court and set up a surveillance at approximately 7:00 P.M. Also, assisting Deputy Griffis in the surveillance was Sheriff Lenwood Sager, Larry Ikner, Investigator for the District Attorney's office and Deputy Gibson of the Monroe County Sheriff's Office.

Deputy Griffis testified that the surveillance was on the room at all times from

7:00 P.M. until the next morning when the Appellant left the room.

At daylight the next morning, all officers observed the Appellant leave the room with the large, brown suitcase. Also, all officers involved had the vehicle in sight from the time it left the motel until it was stopped.

Investigator Ikner testified that he had the motel room under surveillance during the whole time. He further testified that Appellant left the room with a large, brown suitcase and placed it in a vehicle.

Officer Griffis stated that he was told by Investigator Ikner that the brown suitcase was placed on the back seat of the vehicle.

The State's evidence shows that Deputy Griffis and Gibson fell immeidately in behind the Appellant, never losing sight of him. Griffis testified that after stopping the car, he had the Appellant go to the back of the vehicle with Deputy Gibson. Griffis stated that he placed Appellant in a position where he could not drive off;

"Q At the particular time you observed the suitcase on the back seat, was Oneil Turberville still in a position where he

could drive off?

"A No, sir. He was out of the car. I made sure that he wasn't in a position where he could drive off."

Deputy Griffis testified that he removed an article of clothes off the brown suitcase by pushing the article aside.

Griffis also stated that when he stopped the car, he observed a large, brown suitcase on the back seat with a brown clothes bag on top of it.

In answer to the District Attorney's questions about whether he searched the suitcase, Griffis testified:

"A That's the only thing I went for, was the BROWN SUITCASE.
(Emphasis added.)

"Q That's the only thing you looked at? (Emphasis added.)

"A Yes, sir." (Emphasis added.)

Further testimony by Griffis:

"Q You were looking for the SUITCASE? (Emphasis added.)

"A That's what I was looking for." (Emphasis added.)

Deputy Griffis opened the suitcase and found that it contained marijuana, which was placed in two heavy duty garbage bag--dark, green bags that he could not see through. He stated that they were sealed up with the type of "seals" that you fasten a loaf of bread.

Griffis testified that the suitcase was a large, brown suitcase that zipped up and then had buckles on it. Both the buckles and the zipper were closed when Griffis opened it, without a warrant.

This was a warrantless search of the brown suitcase at the place where Appellant's vehicle was stopped, and Appellant did not have control of the vehicle or the suitcase.

Deputy Griffis stated that he had known Appellant before; that he was not afraid of him; that Appellant had never given him any trouble; that Appellant did not have a violent record.

Griffis also testified that he arrested Appellant for what he found in the suitcase.

The Circuit Court, after considering the testimony previously taken, denied the

Motion to Suppress and further found Petitioner to be guilty of possession of marijuana and sentenced the Petitioner to five years in the State Penitentiary. From the denial of the Motion to Suppress and the conviction in the Circuit Court, Petitioner, Everette Oneil Turberville appealed to the Court of Criminal Appeals in the State of Alabama.

The Court of Criminal Appeals affirmed the Trial Court on May 3, 1983, without opinion. See Appendix 1a infra. Petitioner then filed an application for rehearing and a Rule 39(k) motion in the Court of Criminal Appeals on May 17, 1983, which was denied without opinion. See Appendix 2a infra.

Petitioner then filed a petition for writ of certiorari to the Court of Criminal Appeals in the Alabama Supreme Court, which was granted on August 12, 1983. See Appendix 3a infra.

The Supreme Court of Alabama subsequently quashed its writ as improvidently granted on October 3, 1983. See Appendix 4a infra.

REASONS FOR GRANTING THE WRIT

The facts in this case, which are identical to *Arkansas v. Sanders*, 42 U.S. 753, 61 L.Ed.2d 235, 99 S.Ct.2586, present an opportunity for this Court to more fully clarify the holding in *United States v. Ross*, 456 U.S. 798, 72 L.Ed.2d 572, 102 S.Ct.2157, which held in part, "Although we have rejected some of the reasoning in *Sanders*, we adhere to our holding in that case."

This petition for writ of certiorari brings before this Honorable Court the question of whether a search warrant is required where the officers have probable cause to search a piece of luggage that is subsequently placed in a vehicle. Put another way, does the placing of the suspected locus of contraband into a vehicle negate the necessity of a search warrant, where the suspected locus is the personal luggage and not the automobile where the luggage was placed.

At no time did this case involve pro-

bable cause to believe that contraband was hidden in a vehicle. The State's evidence is absolutely clear that the officers were informed of, and that their probable cause was directed at, a "large, brown suitcase".

Petitioner further shows that the facts of Petitioner's case are almost identical to the case of the United States v. Chadwick, (US) 97 S.Ct.2476, 53 L.Ed.2d 538, and also Arkansas v. Sanders, 42 U.S.753, 61 L.Ed.2d 235, 99 S.Ct.2586.

In Arkansas v. Sanders, *supra*, the Court stated "the automobile exception from the warrant requirement will not be extended to the warrantless search of one's personal luggage merely because it was located in an automobile lawfully stopped by the police".

Further, the Court said in Sanders, *supra*, luggage is a common repository for one's personal effects, and therefore, it is inevitably associated with the expectation of privacy.

In the case of United States v. Chadwick, *supra*, this Court merely held that where officers have probable cause to believe a specific container contains contraband before the said container is placed in

an automobile, does not give rise to the automobile exception where the officers subsequently stopped a vehicle and seized the container.

There is no question based upon the facts in this case that the officers' probable cause was directed to one large, brown suitcase that was not placed in a vehicle until several hours after the Petitioner had been placed under surveillance. Therefore, this case is identical in fact to Chadwick, supra, and Sanders, supra.

It is Petitioner's contention that the part of Sanders, supra, which the Court in Ross, supra, rejected is that part dealing with any container in a vehicle which might be the repository of personal effects. The Court has simply said in Ross, supra, that where there is probable cause to believe that a vehicle is carrying contraband, then the officers have a right to search the entire vehicle and all contents therein.

It is Petitioner's position that the Court has not changed the rule that where probable cause exists to believe that a container contains contraband and is subsequently placed in a vehicle, then that fact alone, being the fact that the container was placed

in a vehicle, places it within the automobile exception. In Petitioner's case, there are no exigent circumstances. Based upon all of the testimony by the State, the officers had complete control of the large, brown suitcase, and the Appellant had no control whatsoever of the vehicle or the brown suitcase.

The facts in this case differ absolutely from Carroll v. United States, 267 US 132, 69 L.Ed.543, 45 S.Ct.280, Chambers v. Maroney, 399 U.S.42, 95 S.Ct.1975, 26 L.Ed.2d 419 (1970), California v. Robbins, 453 US 420, 69 L.Ed.2d 744, 101 S.Ct.2841, and the United States v. Ross, *supra*. In all of these cases, there was probable cause to believe that the vehicles contained contraband. While hoping not to be redundant, we merely point out to the Court that in the case before the Court, as well as in Chadwick, *supra*, and Sanders, *supra*, that probable cause was directed at a particular container which was subsequently placed in a vehicle. Accordingly, certiorari should be granted to review the substantial constitutional issues contained in Petitioner's case, and that this Court in addressing the issue could use the facts in this case

to more clearly set out that part of Sanders,
supra, that Ross, supra, rejected.

CONCLUSION

The petition for a writ of certiorari should be granted.

Dated: Monroeville, Alabama
November 28, 1983

Respectfully submitted,

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}

APPENDIX

1a

THE ALABAMA COURT OF CRIMINAL APPEALS
Montgomery, Alabama

RE: CC-82-16
1st Division, 537 Monroe County Circuit
Court

EVERETTE TURBERVILLE,
Appellant,
v.
THE STATE,
Appellee.

Dear Sir: This is to advise you that on May 3, 1983, the Court of Criminal Appeals announced decision of:

in the above stated cause.

Yours truly,
MOLLY JORDAN, CLERK

THE ALABAMA COURT OF CRIMINAL APPEALS
Montgomery, Alabama

RE: CC-82-16

1st Division, 537 Monroe County Circuit
Court

EVERETTE TURBERVILLE,
Appellant,
v.
THE STATE,
Appellee.

Dear Sir: This is to advise you that on
May 31, 1983, the Court of Criminal Appeals
announced decision of:

Application for rehearing overruled.

No opinion.

in the above stated cause.

Yours truly,
MOLLY JORDAN, CLERK

THE STATE OF ALABAMA - JUDICIAL DEPARTMENT
THE SUPREME COURT OF ALABAMA
SPECIAL TERM, 1983

Ex parte Everette O'Neil Turberville
82-862

PETITION FOR WRIT OF CERTIORARI TO THE
COURT OF CRIMINAL APPEALS

(In re: Everette Turberville

v.

State of Alabama)

PER CURIAM.

Writ granted.

Because the petition for writ of certiorari utilizing ARAP 39(k) raises a substantial constitutional issue not addressed by the appellate court, we remand this cause to the Court of Criminal Appeals for consideration of the search and seizure issue. See United States v. Place, [No. ____], June 30, 1983] 77 L.Ed.110 (1983).

WRIT GRANTED; CAUSE REMANDED.

All the Justices concur.

THE STATE OF ALABAMA - JUDICIAL DEPARTMENT
THE SUPREME COURT OF ALABAMA
SPECIAL TERM, 1983

Ex parte Everette O'Neil Turberville
82-862

PETITION FOR WRIT OF CERTIORARI TO THE
COURT OF CRIMINAL APPEALS
(In re: Everette Turberville
v.
State of Alabama)

PER CURIAM.

RULES SUSPENDED; APPLICATION FOR RE-
HEARING GRANTED; ORIGINAL OPINION WITHDRAWN;
WRIT QUASHED AS IMPROVIDENTLY GRANTED.

All the Justices concur except Embry
and Beatty, JJ., not sitting.